

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-213391**DATE:** March 26, 1984**MATTER OF:** Westinghouse Electric Corporation**DIGEST:**

Bidder who warrants kilowatt loss at 180 MVA may not have its bid corrected to reflect loss at 300 MVA since loss figures are not readily converted and other bidder could be prejudiced.

Westinghouse Electric Corporation (Westinghouse) protests the rejection of its low bid as nonresponsive and the award of a contract to McGraw-Edison by the Department of Energy, Western Area Power Administration (Western), for a phase shifting transformer, under invitation for bids (IFB) No. DE-FB65-83WP15819.

Although we do not agree that the bid was nonresponsive, Westinghouse clearly made a mistake in its bid which cannot be corrected and which mandates that the bid be rejected. For this reason, the protest is denied.

Section "D" of the solicitation provided that each bidder was to submit warranted kilowatt losses for its transformer. The warranted losses were converted into cost figures which were added to each bid price for the transformer. Under paragraph J5 (Failure to Meet Performance Warranties), the warranted kilowatt loss stated by the bidder would later be compared to the actual test loss value for the transformer required by subparagraph 2.1.26(h). If the actual loss value exceeded the warranted loss value, the price of the transformer would be reduced by the excess.

Kilowatt losses can be calculated at three megavolt-ampere (MVA) ratings: 180, 240, and 300. In verifying its warranted kilowatt losses at the request of the contracting officer, Westinghouse advised that it calculated and submitted its kilowatt loss data (1,005 kilowatts) at 180 MVA, and does not include cooling equipment losses. The firm advised the agency that, at 300 MVA, the loss would be 1,920 kilowatts. According to Western, the solicitation

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required the data to be submitted at 300 MVA, which includes cooling equipment losses. Because the data submitted applies at the wrong MVA rating, Western determined Westinghouse to be nonresponsive.

The test to be applied in determining the responsiveness of a bid is whether the bid as submitted is an offer to perform, without exception, the exact thing called for in the invitation, so that acceptance will bind the contractor to perform in accord with all its terms and conditions. Hughes and Smith, Inc., B-209870, March 22, 1983, 83-1 CPD 289; 49 Comp. Gen. 553. (1970). Westinghouse submitted such a bid. However, it is impossible to tell from the bid itself that Westinghouse submitted its figures at 180 MVA rather than the required 300 MVA. In fact, Western assumed that the loss figure, inserted in the bid as "1005," not as "1005 at 180 MVA," had been calculated at 300 MVA. It was not until the second low bidder, McGraw-Edison, inquired as to the accuracy of the figure that Western questioned it.

Westinghouse recognizes the government's right to evaluate losses at 300 MVA. Westinghouse contends, however, that the solicitation was ambiguous as to the rating at which loss figures were requested.

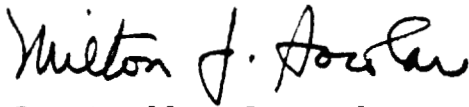
Ambiguity exists if the specifications are susceptible to more than one reasonable interpretation. M. J. Rudolph Corporation, B-196159, January 31, 1980, 80-1 CPD 84; Telectro-Mek, Inc., B-190653, April 13, 1979, 79-1 CPD 263. We find there is only one reasonable interpretation of the IFB--the loss data was requested at 300 MVA. Paragraph D2 clearly asks for data while the cooling equipment is in use and Westinghouse does not dispute that the equipment is not in use at 180 MVA. Furthermore, the subparagraph 2.1.26(h) testing for actual loss figures explicitly asks for data to be submitted at 300 MVA. Finally, paragraph J5 clearly compares the warranted loss data (paragraph D2) with the actual test data required by subparagraph 2.1.26(h). Test data at 300 MVA would be useless without loss warranted data at the same rate.

Given the requirement for the submission of loss data at 300 MVA, the question, then, is whether Westinghouse should have been permitted to correct its bid. A bid may be corrected upon the submission of clear and convincing evidence that a bidder actually intended to bid a different amount. Kalamazoo Engineering, B-202831, October 14, 1981, 81-2 CPD 309.

Westinghouse argues that its loss figures at 180 MVA were easily convertible to 300 MVA by the use of a simple formula, involving the squaring of the loss increase from 180 MVA to 300 MVA plus a figure for auxiliary losses not included in Westinghouse's bid. The agency, however, is "unaware of any acceptable method . . . to fairly convert losses from one MVA base to another." Because of this, we find that the preciseness required for bid correction is missing given the leeway Westinghouse had in resubmitting loss figures. This is particularly relevant here where correction of Westinghouse's bid would make it so close to the next low bid as to be inappropriate.

The correction requested by Westinghouse would result in its evaluated bid remaining lower than McGraw-Edison's evaluated bid of \$5,903,120 by \$25,000, a difference of merely 0.4 percent. Prior to the requested correction due to the understated losses, the evaluated Westinghouse bid was almost \$1.4 million lower than the McGraw-Edison bid. Regardless of the good faith of the party involved, we believe a correction in this circumstance should be denied because of the legitimate concern that public confidence in the competitive bid system would be affected. See The Foley Company, B-209844, January 24, 1983, 83-1 CPD 84.

For the above reasons, the protest is denied.

for 
Comptroller General
of the United States